INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Argument	3
Conclusion	8
Appendix	9

CITATIONS

Cases:

Bowles v. *Willingham*, 321 U. S. 503	3-4
Lockerty v. *Phillips*, 319 U. S. 182	3
McRae v. *Woods*, 165 F. 2d 790, certiorari denied, 333 U. S. 882, rehearing denied, 334 U. S. 830	3, 6
150 East 47 Street Corp. v. *Creedon*, 162 F. 2d 206	6
Oswald & Hess Co. v. *Bowles*, 148 F. 2d 543, certiorari denied, 325 U. S. 871	4
Safeway Stores, Inc. v. *Brown*, 138 F. 2d 278, certiorari denied, 320 U. S. 797	6
Sikora Realty Corp. v. *Woods*, 169 F. 2d 144, certiorari denied, 333 U. S. 855, rehearing denied, 334 U. S. 840	7
Snyder v. *United States*, 82 F. Supp. 335	8
Talbot v. *Woods*, 164 F. 2d 493	7
United Distillers Products Co. v. *Bowles*, 148 F. 2d 345	6
Watkins v. *Woods*, 177 F. 2d 516	4
Woods v. *Hills*, 334 U. S. 210	4, 6, 7
Yakus v. *United States*, 321 U. S. 414	3

Statutes:

Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 60 Stat. 664; 50 U.S.C. App. 901 *et seq.*):	
Section 1(b) (50 U. S. C. App. 901(b))	9
Section 203(a) (50 U. S. C. App. 923(a))	5, 9
Section 204(a) (50 U. S. C. App. 924(a))	3, 5, 10
Section 204(c)	10
Section 204(d)	11
Section 204(e) (50 U. S. C. App. 924(e))	3, 6, 111
Housing and Rent Act of 1947, as amended (61 Stat. 193, 62 Stat. 37, 93; 50 U. S. C. App. 1891 *et seq.*:	
Sec. 204 (50 U. S. C. App., Supp. II, 1894(e)	3, 4, 12
28 U. S. C. 1346	4
28 U. S. C. 2680	4

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 547

JOHN W. SNYDER, PETITIONER

v.

TIGHE E. WOODS, HOUSING EXPEDITER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The United States Emergency Court of Appeals rendered no opinion (R. 5).

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on December 22, 1949 (R. 5). The petition for a writ of certiorari was filed on January 19, 1950. The jurisdiction of this Court is invoked under Section 204(d) of the Emergency Price Control Act of 1942, *infra*,

p. 11, making applicable Section 240 of the Judicial Code, as amended (now 28 U. S. C. 1254).

QUESTIONS PRESENTED

1. Whether the United States Emergency Court of Appeals had jurisdiction to enter a money judgment in favor of petitioner.

2. Whether that court had jurisdiction to entertain a complaint where the complainant had instituted the suit without first filing a protest with the Administrator, or without obtaining leave from an enforcement court to file the suit, as required by the Emergency Price Control Act.

STATUTES INVOLVED

The pertinent provisions of the statutes involved are set forth in the Appendix, *infra* pp. 9-14.

STATEMENT

On November 30, 1949, petitioner filed a complaint against the Housing Expediter in the United States Emergency Court of Appeals in which the sole prayer for relief was for a judgment in the amount of $9,645.00 for damages alleged to have been sustained by him through his observance of an allegedly arbitrary and discriminatory maximum rent covering his property (R. 1-3). On December 7, 1949, respondent moved to dismiss the complaint on the grounds that the Emergency Court of Appeals lacked jurisdiction to entertain the complaint (R. 3-4). The grounds assigned were: (1) that the complaint showed on its face that it was not directed against a denial, in whole or in part,

of a protest and that it failed to show that leave had been obtained from a court to file a complaint pursuant to Section 204(e) of the Emergency Price Control Act; (2) that the complaint failed to set forth circumstances sufficient to establish jurisdiction in the Emergency Court of Appeals under Section 1(b) of the Emergency Price Control Act; and (3) that the entry of a money judgment against the United States was beyond the powers of that court. Respondent's motion was granted and the complaint was dismissed by the Emergency Court of Appeals on December 22, 1949 (R. 5).

ARGUMENT

The United States Emergency Court of Appeals is a court of limited jurisdiction and has only such powers as were conferred upon it by Sections 204(a) and 204(e) of the Emergency Price Control Act of 1942, *infra,* pp. 10-12, and later by Section 204(e)(4) of the Housing and Rent Act of 1947, *infra,* pp. 12-14. See *McRae* v. *Woods,* 165 F. 2d 790 (E.C.A.), certiorari denied, 333 U. S. 882, rehearing denied, 334 U. S. 830. Under Sections 204(a) and 204(e) of the Emergency Price Control Act, its jurisdiction is ancillary and is limited to determining, on proper complaint, the validity of any regulation, order, or price schedule issued under that Act, and to setting aside, in whole or in part, any such regulation, order, or price schedule, or to dismissing the complaint. See *Lockerty* v. *Phillips,* 319 U. S. 182; *Yakus* v. *United States,* 321 U. S. 414; *Bowles* v.

Willingham, 321 U. S. 503; *Woods* v. *Hills,* 334 U. S. 210, and *Oswald & Hess Co.* v. *Bowles,* 148 F. 2d 543, 546 (E. C. A.), certiorari denied, 325 U. S. 871. There is no language in the Act which confers power upon that court to enter a money judgment against anyone, much less when the judgment is, in effect, one against the United States.[1]

The further jurisdiction conferred upon the Emergency Court of Appeals by Section 204(e)(4) of the Housing and Rent Act of 1947, as amended, *infra,* pp. 13-14, extends only to cases involving recommendations of local rent advisory Boards for *general* adjustments in maximum rents, or for decontrol, or those involving decisions of the Housing Expediter with respect to general adjustments in maximum rents or removal of maximum rents for any class of housing accommodations. See *Watkins* v. *Woods,* 177 F. 2d 516 (E.C.A.). Here, too, the Emergency Court is unauthorized to enter a money judgment. Furthermore, the Emergency Court's decisions on cases arising under the Housing and Rent Act of 1947 are made final by Section 204(e)(4) of that Act, *infra,* p. 14, and are not reviewable in any event.

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[1] It may be noted that the district courts of the United States, which have jurisdiction under 28 U.S.C. 1346(b) to enter money judgments against the United States for damages resulting from the wrongful acts of its employees, are precluded by 28 U.S.C. 2680(a) from basing such judgments upon claims growing out of the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government whether or not the discretion be abused.

It is uncontrovertible that neither of the statutes which conferred jurisdiction on the Emergency Court of Appeals authorized that court to enter money judgments. Since the only relief sought by petitioner in his complaint was a money judgment, the court below would have been legally justified in declining to take jurisdiction of petitioner's cause on that ground alone.

2. Apart from the lack of primary jurisdiction in the Emergency Court of Appeals to enter a money judgment, that court did not have even ancillary jurisdiction to entertain petitioner's complaint for the purpose of passing on the validity of the maximum rent regulation and the individual rent order involved. The Emergency Price Control Act provided two avenues only for invoking the exclusive jurisdiction of the Emergency Court of Appeals to pass upon the validity of regulations and orders issued under that Act. Under the first method, a person subject to a regulation or order issued pursuant to the Act was permitted by Section 203(a) thereof, *infra,* p. 9, to file a protest with the Price Administrator setting forth his objections to the regulation or order. Upon a denial of the protest, in whole or in part, by the Administrator, the Emergency Court was authorized by Section 204(a) of the Act, *infra,* pp. 10-11, to hear the complaint of the aggrieved person and to render a decision on the validity of the regulation or order involved in the protest. Under the second method,

the defendant in a civil or criminal enforcement proceeding was permitted by Section 204(e) of the Act, *infra,* pp. 11-12, after obtaining the consent of the enforcement court, to file a complaint in the Emergency Court of Appeals and that court was then authorized to render a decision on the validity of the regulation or order which the defendant in the enforcement proceeding was alleged to have violated. The Emergency Price Control Act outlined no other circumstances under which the exclusive jurisdiction of the Emergency Court to pass upon the validity of a regulation or order issued thereunder might be exercised. In the instant case, petitioner's complaint failed to show that he had taken either of the procedural steps required by the statute before invoking the jurisdiction of the Emergency Court. Consequently, that court lacked jurisdiction under the statute to entertain the complaint for any purpose. Cf. *Woods* v. *Hills, supra; Safeway Stores, Inc.,* v. *Brown,* 138 F. 2d 278 (E.C.A.), certiorari denied, 320 U. S. 797; *United Distillers Products Co.* v. *Bowles,* 148 F. 2d 345 (E.C.A.); *McRae* v. *Woods, supra.* See also *150 East 47 Street Corp.* v. *Creedon,* 162 F. 2d 206, 211 (E.C.A.)

The Emergency Price Control Act expired by its own terms on June 30, 1947, and since the expiration date the jurisdiction conferred upon the Emergency Court of Appeals by that Act has been confined to matters arising out of rights and liabili-

ties preserved to litigants by Section 1(b) of the Act, *infra,* p. 9. See *Woods* v. *Hills, supra,* at pages 213-214; *Sikora Realty Corp.* v. *Woods,* 169 F. 2d 144 (E.C.A.), certiorari denied, 333 U. S. 855, rehearing denied, 334 U. S. 840; and see *Talbot* v. *Woods,* 164 F. 2d 493, wherein the Emergency Court of Appeals said, at page 496:

> * * * § 1(b) obviously refers to civil and criminal enforcement proceedings predicated upon past violations alleged to have been committed while the Act and regulations thereunder were still in effect, and preserves the *ancillary* jurisdiction of the Emergency Court of Appeals * * * to determine the validity of any provision of a regulation or order upon which such enforcement proceeding is predicated. [Emphasis supplied.]

Since petitioner failed to show that there was a cause pending involving a right accrued as of the day the Emergency Price Control Act expired, which required a judicial determination of the validity of a regulation, order, or price schedule, issued under that Act,[2] the court below had no

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[2] Petitioner, of course, had the right at all times during the several years he was subject to the rent regulation and prior to the expiration of the Emergency Price Control Act, to file a protest with the Price Administrator and have the rent regulation or order set aside by the Emergency Court of Appeals, if either was invalidly applied to his housing. He did not, however, see fit to avail himself of the opportunity which the statute offered.

Petitioner filed a suit against the United States in the Court of Claims (which was given no jurisdiction of proceedings under the Emergency Price Control Act) for a money judg-

jurisdiction to entertain his complaint under the saving provision in Section 1(b).

CONCLUSION

The decision of the court below is correct, and the case does not warrant further review. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

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MARCH, 1950.

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ment on the same claims which he asserts in the instant case. That suit was dismissed by the Court of Claims on the ground that it had no jurisdiction to review the Price Administrator's determination of the rate of rent applicable to petitioner's housing, as well as on the additional ground that the losses, if any, sustained by petitioner on the sale of his property were consequential damages, for which the United States was not liable. See *Snyder* v. *United States*, 82 F. Supp. 335.

APPENDIX

1. The Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 60 Stat. 664; 50 U. S. C. App. 901 *et seq.*:

> Sec. 1(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.
>
> Sec. 203. (a) At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections . . .

Section 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c) specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part . . . Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding . . .

* * * * *

(c) There is hereby created a court of the United States to be known as the Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. Two judges shall constitute a quorum of the court and of each division thereof. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this Act;

except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under section 2 or any price schedule effective in accordance with the provisions of section 206. . . .

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended. . . .

(e) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 205 of this Act or section 37 of the Criminal Code, involving alleged violation of any provision of any regulation or order issued under section 2 or of any price schedule effective in accordance with the provisions of section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to

have violated or conspired to violate . . . Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. . . .

2. The Housing and Rent Act of 1947, as amended (61 Stat. 193, 62 Stat. 37 93; 50 U. S. C. App., Supp. II, 1891, *et seq.*:

Sec. 204(e)(1) . . . Any local board may make such recommendations to the Housing Expediter as it deems advisable with respect to the following matters:

(A) Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction, or with respect to any class of housing accommodations within such area or any portion thereof, if in the judgment of the local board the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met; and

(B) Adjustments, other than individual adjustments, in maximum rents in such area or any portion thereof or with respect to

any class of housing accommodations within such area or any portion thereof, deemed by the local board to be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title; and

* * * * *

(4) For the purposes of paragraph (3) any recommendation of a local board as to a matter referred to in paragraph (1) (A) or (B) shall be deemed to be appropriately substantiated and in accordance with applicable law and regulations, and shall be carried into effect as hereinafter provided—

* * * * *

Any representative group of interested parties or the local board may file a complaint concerning such recommendation with the Emergency Court of Appeals within thirty days after the date on which the Housing Expediter notifies the local board of his decision, or the date of the expiration of such thirty-day period, as the case may be. If the Housing Expediter holds the hearing, such group may file a complaint with the Emergency Court of Appeals within thirty days after the rendering of his decision, or within thirty days after the expiration of the time within which his decision should be made. A similar right of appeal shall be afforded in the event the Housing Expediter makes a decision as to a general adjustment or as to removal of maximum rents for any class of housing accom-

modations (other than for luxury housing accommodations under the second sentence of section 204 (c)) on his own initiative . . . Thereupon, the Emergency Court of Appeals shall have jurisdiction to enter, within sixty days after the date of its receipt of such recommendation or decision from the Housing Expediter (or within such additional period of not more than thirty days as the court may find necessary in exceptional cases), an order approving or disapproving the recommendation of the local board or decision of the Housing Expediter. . . . The judgment and decree of the court shall be final. The powers heretofore granted by law to the Emergency Court of Appeals are hereby continued for purposes of exercise of the jurisdiction granted by this subsection.

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